



**Original: English**

**No. ICC-01/14-01/18  
Date: 1 February 2021**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Decision on Matters concerning Opening Statements**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 64 of the Rome Statute (the ‘Statute’) and Rules 89(1) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on Matters concerning Opening Statements’.

1. On 16 July 2020, the Chamber scheduled the opening statements to commence on 9 February 2021.<sup>1</sup>
2. On 26 August 2020, in his ‘Initial Directions on the Conduct of the Proceedings’ (the ‘Initial Directions’), the Presiding Judge, *inter alia*, issued directions on the opening statements to the Office of the Prosecutor (the ‘Prosecution’), the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes (the ‘CLR V 2’ and, jointly, the ‘CLR V’), the Yekatom Defence and the Ngaïssona Defence (jointly, the ‘Defence’).<sup>2</sup>
3. Specifically, he directed the CLR V and the Defence to decide collectively amongst the respective teams whether to make their opening statements at the commencement of the trial or just prior to the presentation of their evidence, if any.<sup>3</sup> The Presiding Judge directed the CLR V and the Defence to inform the Chamber at the latest 15 days prior to the commencement of trial if they did not intend to present their opening statements at the commencement of the trial.<sup>4</sup>
4. On 15 January 2021, the Single Judge granted the Yekatom Defence’s request to present its opening statements prior to its presentation of evidence, irrespective of the timing of the opening statements of the Ngaïssona Defence.<sup>5</sup>

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<sup>1</sup> Decision Setting the Commencement Date of the Trial, ICC-01/14-01/18-589, paras 24-25.

<sup>2</sup> Initial Directions, ICC-01/14-01/18-631.

<sup>3</sup> Initial Directions, ICC-01/14-01/18-631, para. 11.

<sup>4</sup> Initial Directions, ICC-01/14-01/18-631, para. 13.

<sup>5</sup> Decision on the Yekatom Defence Request for Reconsideration of the Initial Directions on Opening Statements, ICC-01/14-01/18-822, para. 7. *See also* Request for reconsideration of the “Decision on the Initial Directions on the Conduct of the Proceedings” (ICC-01/14-01/18-631), 6 January 2021, ICC-01/14-01/18-801; Ngaïssona Defence response to the Yekatom Defence’s “Request for reconsideration of the ‘Decision on the Initial Directions on the Conduct of the Proceedings’” (ICC-01/14-01/18-1243), 11 January 2021, ICC-01/14-01/18-810; Prosecution’s Response to the Yekatom Defence’s Request for

5. On 19 January 2021, the CLRV 2 requested the Chamber to (i) direct the Registry to, *inter alia*, assess the feasibility of two legal representatives conducting their opening statements by video-link from their respective locations (the ‘Designated Locations’ and the ‘CLRV 2 Request’, respectively); (ii) authorise these two legal representatives to make their opening statements by video-link from the Designated Locations; and (iii) direct the Registry to facilitate the technical organisation.<sup>6</sup>
6. On 20 January 2021, in line with the Single Judge’s direction,<sup>7</sup> the Ngaïssona Defence informed the Chamber that it does not intend to file a response.<sup>8</sup> On 22 January 2021, the Yekatom Defence stated that it does not oppose the CLRV 2 Request and defers to the Chamber’s discretion.<sup>9</sup>
7. On 25 January 2021, also in line with the Single Judge’s direction,<sup>10</sup> the Registry submitted its observations, stating that it would be technically feasible for the CLRV 2 to make their opening statements by video-link from their Designated Locations (the ‘Registry Observations’).<sup>11</sup>
8. On the same day, the CLRV confirmed that they will present their opening statements at the commencement of the trial.<sup>12</sup>
9. In its response, the Prosecution deferred to the Chamber’s discretion in the disposition of the CLRV 2 Request.<sup>13</sup> Additionally, it requests that (i) the Chamber provide clear guidance on the scope and purpose of the opening

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reconsideration of the “Decision on the Initial Directions on the Conduct of the Proceedings” (ICC-01/14-01/18-631), 12 January 2021, ICC-01/14-01/18-814.

<sup>6</sup> Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d’ouverture par liaison vidéo, ICC-01/14-01/18-838-Conf (with one confidential annex) (public redacted version notified the same day, ICC-01/14-01/18-838-Red).

<sup>7</sup> Email from the Chamber, 20 January 2021, at 12:48.

<sup>8</sup> Email from the Ngaïssona Defence, 20 January 2021, at 17:27.

<sup>9</sup> Email from the Yekatom Defence, 22 January 2021, at 12:38.

<sup>10</sup> Email from the Chamber, 20 January 2021, at 12:48.

<sup>11</sup> Registry’s Observations on the Technical Feasibility of Using Video-Conferencing for Part of the Opening Statements of the Legal Representatives of Victims for Other Crimes, ICC-01/14-01/18-849-Conf, para. 10.

<sup>12</sup> Email to the Chamber, 25 January 2021, at 18:32.

<sup>13</sup> Prosecution’s Observations on the “Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d’ouverture par liaison vidéo” (ICC-01/14-01/18-838-Conf), 25 January 2021, ICC-01/14-01/18-852-Conf (the ‘Prosecution Observations’), paras 1, 3-5, 9.

statements (the ‘Prosecution Sub-Request 1’); and (ii) should the accused intend to make oral unsworn statements pursuant to Article 67(1)(h) of the Statute, the Chamber further direct that timely notice be provided and set clear parameters as to their timing and content (the ‘Prosecution Sub-Request 2’).<sup>14</sup>

10. On 26 January 2021, as per the time limit set by the Single Judge,<sup>15</sup> the Defence indicated that it does not intend to respond to either of the Prosecution’s requests.<sup>16</sup> On 27 January 2021, the CLRV responded that the Prosecution Sub-Request 1 should be rejected and Prosecution Sub-Request 2 should be granted, insofar as this will be in the interest of the proper administration of the proceedings (the ‘CLRV Response’).<sup>17</sup>
11. On 28 January 2021, the Prosecution inquired with the Chamber on several matters concerning the opening statements, including the specific sitting hours, ‘mode(s) of participation’ and the ‘number of individuals permitted inside the courtroom during the hearing’.<sup>18</sup>
12. On the same day, the Registry sought the Chamber’s guidance regarding a request by another counsel of the legal representatives (the ‘LRV’) to be granted an exception to access the Court’s premises for the opening statements, before completing the ten days of quarantine required prior to accessing the courtroom.<sup>19</sup> Noting the host State regulations regarding quarantine, and the fact that the CLRV 2’s participation in the hearing could be facilitated by way of a video conference from one of the Designated Locations,<sup>20</sup> the Chamber did not grant an exception to access the building in these circumstances.<sup>21</sup>

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<sup>14</sup> Prosecution Observations, ICC-01/14-01/18-852-Conf, paras 7-9.

<sup>15</sup> Email from the Chamber, 26 January 2021, at 11:40. The Single Judge shortened the response deadline to 27 January 2021.

<sup>16</sup> Email from the Ngaiisona Defence, 26 January 2021, at 15:56; email from the Yekatom Defence, 26 January 2021, at 16:21.

<sup>17</sup> Common Legal Representatives’ Joint Response to the “Prosecution’s Observations on the ‘Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d’ouverture par liaison vidéo’ (ICC-01/14-01/18-838-Conf)”, ICC-01/14-01/18-854-Conf, paras 11, 13.

<sup>18</sup> Email from the Prosecution, 28 January 2021, at 14:43.

<sup>19</sup> Email from the Registry, 28 January 2021, at 17:39.

<sup>20</sup> Registry Observations, ICC-01/14-01/18-849-Conf, paras 7, 10.

<sup>21</sup> Email from the Chamber, 29 January 2021, at 14:00.

13. Noting the Chamber's decision to start the opening statements on 9 February 2021, it considers it appropriate to further specify the dates and hearing schedule. Accordingly, the Chamber schedules the opening statements for 9 to 11 February 2021.<sup>22</sup> After consultation with the Registry,<sup>23</sup> the sessions are tentatively scheduled for 09:30 to 11:00, 11:30 to 13:00 and 14:00 to 15:30.
14. Recalling the Initial Directions,<sup>24</sup> the Chamber will first hear the opening statements by the Prosecution, followed by the CLRV in an order to be decided amongst themselves,<sup>25</sup> and lastly, by the Ngaïssona Defence. The Chamber further recalls that, in the Initial Directions, the Presiding Judge granted six hours to the Prosecution, three hours to the CLRV, to be divided between them as they see fit, and three hours to the Ngaïssona Defence.<sup>26</sup>
15. Regarding the CLRV 2 Request, and noting the Registry's submissions in this regard,<sup>27</sup> the Chamber grants the request and authorises the abovementioned two legal representatives of the CLRV 2 to present part of their opening statements from the Designated Locations. In this context, the Chamber further clarifies that the LRV may participate in the hearing in the same manner. Accordingly, the Registry is directed to make the necessary arrangements in consultation with the concerned legal representatives.
16. In this context, the Chamber notes that the Prosecution's inquiry regarding the modes of participation lacks a specific request and will therefore not be entertained at this point.
17. As regards the Prosecution Sub-Request 1,<sup>28</sup> the Chamber sees no need to issue any further guidance on the scope and purpose of the opening statements. The Chamber notes in this context that the Prosecution appears to have had no issues

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<sup>22</sup> The Chamber notes that it anticipates that the opening statements can be concluded on 11 February 2021. Nonetheless, if required, it is prepared to sit on 12 February 2021.

<sup>23</sup> Email from the Registry, 28 January 2021, at 17:31. The Chamber notes that the Registry has consulted the Court's Crisis Management Team in this regard.

<sup>24</sup> Initial Directions, ICC-01/14-01/18-631, para. 9.

<sup>25</sup> Initial Directions, ICC-01/14-01/18-631, para. 13.

<sup>26</sup> Initial Directions, ICC-01/14-01/18-631, para. 10.

<sup>27</sup> Registry Observations, ICC-01/14-01/18-849-Conf, para. 10.

<sup>28</sup> Email from the Ngaïssona Defence, 26 January 2021, at 15:56; email from the Yekatom Defence, 26 January 2021, at 16:21; the CLRV Response, ICC-01/14-01/18-854-Conf, paras 11-12.

in preparing its opening statements in other cases, after having received similar instructions to the ones given by the Presiding Judge. It is not discernible why the Prosecution would not be able to do so in this case. The Chamber further recalls its guidance that it is for each party to determine the organisation of its case,<sup>29</sup> which it considers to also apply to the opening statements.

18. As regards the Prosecution Sub-Request 2, absent any indication from the Defence that either accused intends to make a statement under Article 67(1)(h) of the Statute,<sup>30</sup> the Chamber dismisses the request as premature.
19. Lastly, the Chamber reminds the Prosecution that matters falling within the scope of the Registry's competencies, should be raised with the Registry. Accordingly, the Prosecution is instructed to liaise with the Registry with regard to its query on the number of individuals permitted in the courtroom.

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<sup>29</sup> See Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, 16 October 2020, ICC-01/14-01/18-685, para. 23.

<sup>30</sup> Email from the Ngaissona Defence, 26 January 2021, at 15:56; email from the Yekatom Defence, 26 January 2021, at 16:21.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**SCHEDULES** the opening statements for 9 to 11 February 2021 at the seat of the Court, as set out in paragraphs 13-14 above;

**GRANTS** the CLRV 2 Request;

**DIRECTS** the Registry to make the necessary arrangements for the concerned legal representatives to present their opening statements by video-link;

**REJECTS** the Prosecution Sub-Request 1 and the Prosecution Sub-Request 2; and

**DIRECTS** the CLRV to file a public redacted version of the CLRV Response within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.

**Judge Péter Kovács**

**Judge Bertram Schmitt**

**Presiding Judge**

**Judge Chang-ho Chung**

Dated 1 February 2021

At The Hague, The Netherlands